IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

MFA.No. 493 of 2001(B)

AGAINST THE JUDGEMENT/ORDER IN OPMV.2586/1994 Dated 18/10/2000
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APPELLANTS;PETITIONER 1 TO 4:
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1. **JANCY JOSEPH, W/O.SUNNY THOMAS,**
   AGED 33 YEARS (WIFE OF THE DECEASED)
   RESIDING AT VADAKKARA KUNNEL HOUSE,
   CHERUKKAD P.O., ATHIODI (VIA),
   KAYANNA AMSOM, ONNAL DESOM,
   KOZHIKODE DISTRICT.

2. **SAYOOJ (MINOR), S/O.SUNNY THOMAS,**
   AGED 8 YEARS, DATE OF BIRTH 8/06/1992
   REPRESENTED BY LEGAL GUARDIAN,
   MOTHER THE FIRST PETITIONER (SON OF THE DECEASED)
   RESIDING AT VADAKKARA KUNNEL HOUSE,
   CHERUKKAD P.O., ATHIODI (VIA),
   KAYANNA AMSOM, ONNAL DESOM,
   KOZHIKODE DISTRICT.

3. **V.J.THOMAS, S/O.JOSEPH, AGED 68 YEARS,**
   (FATHER OF THE DECEASED) RESIDING AT
   VADAKKARA KUNNEL HOUSE, CHERUKKAD P.O.,
   ATHIODI (VIA), KAYANNA AMSOM, ONNAL DESOM,
   KOZHIKODE DISTRICT.

4. **MARY THOMAS, W/O.THOMAS, AGED 61 YEARS,**
   (MOTHER OF DECEASED) RESIDING AT VADAKKARA KUNNEL
   HOUSE, CHERUKKAD P.O., ATHIODI (VIA),
   KAYANNA AMSOM, ONNAL DESOM, KOZHIKODE DISTRICT.

BY ADV. SMT.KOCHUMOL KODUVATH
SMT.M.C.BINDUMOL
SRI.V.M.ABHILASH

RESPONDENTS: RESPONDENTS:PETITIONER 5 TO 10:

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1. GRACY THOMAS, D/O.THOMAS,
AGED 31 YEARS, (SISTER OF THE DECEASED) RESIDING
AT VADAKKE KUNNEL HOUSE, CHERUKAD P.O.,
ATHIODI (VIA), KAYANNA AMSOM, ONNAL DESOM,
KOZHIKODE DISTRICT.

2. LICY THOMAS, D/O.THOMAS, AGED 29 YEARS,
(SISTER OF THE DECEASED), RESIDING AT VADAKKARA
KUNNEL HOUSE, CHERUKKAD P.O., ATHIODI (VIA),
KAYANNA AMSOM, ONNAL DESOM, KOZHIKODE DISTRICT.

3. GLADY THOMAS, D/O.THOMAS, AGED 27 YEARS,
(SISTER OF THE DECEASED) RESIDING AT VADAKKARA
KUNNEL HOUSE, CHERUKKAD P.O., ATHIODI (VIA),
KAYANNA AMSOM, ONNAL DESOM, KOZHIKODE DISTRICT.

4. JILCY THOMAS, D/O.THOMAS, AGED 25 YEARS,
(SISTER OF THE DECEASED) RESIDING AT VADAKKARA
KUNNEL HOUSE, CHERUKKAD P.O., ATHIODI (VIA),
KAYANNA AMSOM, ONNAL DESOM, KOZHIKODE DISTRICT.

5. SIJI THOMAS, S/O.THOMAS, AGED 25 YEARS,
(SISTER OF THE DECEASED) RESIDING AT VADAKKARA
KUNNEL HOUSE, CHERUKKAD P.O., ATHIODI (VIA),
KAYANNA AMSOM, ONNAL DESOM, KOZHIKODE DISTRICT.

6. M.MANZOOR, S/O.IMBICHIMAMOO, MUTTATH HOUSE,
ELATHUR P.O., KOZHIKODE DISTRICT.

7. A.VIJAYAN, S/O.DAMODHARAN NAIR,
AGED 38, MANUTHERI ILLATH HOUSE, AVIDANELLUR AMSOM,
DESOM NADUVANNUR P.O., KOZHIKODE DISTRICT.

8. UNITED INDIA INSURANCE CO.LTD.,
BRANCH OFFICE, SREEMA TOWERS, KOZHIKODE.

9. M.P. SAIDALI, M.P.MOTOR SERVICE,
WYNAD ROAD, CALICUT.

10. N.K.MOHANAN, S/O.NARAYANAN NAIR, KRISHNAVILASOM,
KAYANNA AMSOM, CHERUKAD P.O., ATHIODI (VIA),
KOZHIKODE.

11. THE NATIONAL INSURANCE CO.LTD., BRANCH OFFICE,
P.B.NO.529, JAIL ROAD, CALICUT.

R8 BY ADV. SRI.M.A.GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.493 OF 2001

Dated 11th December, 2007

JUDGMENT

Koshy,J.

A man aged 33 died in a motor accident that occurred on 18.4.1994. The dependents claimed a compensation of Rs.3,00,000/=. According to the claimants, the deceased was a building contractor in private sector earning a sum of Rs.2,500/= per month at the time of accident. The Tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the United India Insurance Co. Ltd. which is the third respondent before the Tribunal (R8 in this appeal). Application was filed by the wife aged 27 and a minor child aged two years along with parents of the deceased. Tribunal awarded only Rs.2,32,500/= as compensation. Only quantum of compensation is disputed in this appeal.

2. Tribunal has fixed Rs.1,500/= as the monthly income. According to the claimants, the deceased was getting Rs.2,500/= as the monthly income. Copy of the inquest report (Ext.A8) shows that even at that time it was stated that he was engaged as a building contractor. We also note that even a building worker during 1994 in Kerala would get a minimum Rs.80 – Rs.100/= per day and if he gets work for 25-26 days in

a month, the amount will be more than Rs.2,100/= per month. We take Rs.2,100/= as the monthly income and after deducting one third for personal expenses Rs.1,400/= is fixed as the dependency income. Taking guidelines from the second schedule, Tribunal has fixed 17 as the multiplier. Even though it is contended that in view of the increase in life expectancy, decrease in interest rate etc. a higher multiplier should be applied, we are of the view that considering the three member bench decision of the Supreme Court in **Smt.Supe Dei and others** v. **M/s.National Insurance Company Ltd. and another** (JT 2002 (Suppl.1) SC 451) and recent decision in **APSRTC** v. **M.Pentaiah Chary** (2007 AIR SCW 5689) only the multiplier as fixed in the second schedule need be taken. If that be so, compensation payable for loss of dependency will be Rs.2,85,600/= (Rs.1400 x 12 x 17). Tribunal has awarded only Rs.2,04,000/=. Therefore, the additional amount payable under this head will be Rs.81,600/=. Even though it is contended that compensation granted under other heads are inadequate, considering the total compensation awarded we are not enhancing the same. The above additional amount of Rs.81,600/= should be deposited by the 8th respondent insurance company, over and above the decreed amount by the Tribunal, with 7.5% interest from the date of application till its deposit. On deposit of the above, Rs.5,000/= each is allowed to be

withdrawn by appellants 3 and 4, Rs.15,000/= is allowed to be withdrawn by the first appellant and balance amount with entire interest should be deposited in the name of the second appellant in a nationalised bank and it can be withdrawn by him when he attains the age of 21.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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